

Judge Timothy W. Dore
Chapter 11

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON**

In re

LODGE HOLDINGS COMPANY,

Debtor.

NO. 16-15814

STATE OF WASHINGTON
DEPARTMENT OF REVENUE
MOTION FOR TURNOVER OF
TRUST FUNDS.

COMES NOW counsel for the Washington State Department of Revenue and MOVES for an order of turnover of cash upon the following grounds:

1. Debtor Collects Sales Tax Through Restaurant Consumer Sales. Debtor owns and operates several restaurants and collects sales tax at point of sale in trust under RCW 82.08.050:

RCW 82.08.050

Buyer to pay, seller to collect tax—Statement of tax—Exception—Penalties—Contingent expiration of subsection.

(1) The tax imposed in this chapter must be paid by the buyer to the seller. Each seller must collect from the buyer the full amount of the tax payable in respect to each taxable sale in accordance with the schedule of collections adopted by the department under the provisions of RCW 82.08.060.

(2) The tax required by this chapter, to be collected by the seller, is deemed to be held in trust by the seller until paid to the department. Any seller who appropriates or converts the tax collected to the seller's own use or to any use other than the payment of the tax to the extent that the money required to be collected is not available for payment on the due date as prescribed in this chapter is guilty of a gross misdemeanor.

(3) Except as otherwise provided in this section, if any seller fails to collect the tax imposed in this chapter or, having collected the tax, fails to pay it to the department in the manner prescribed by this chapter, whether such failure is the result of the seller's own acts or the result of acts or conditions beyond the seller's control, the seller is, nevertheless, personally liable to the state for the amount of the tax.

1 (4) Sellers are not relieved from personal liability for the amount of the tax unless
2 they maintain proper records of exempt or nontaxable transactions and provide
3 them to the department when requested.

4 (5) Sellers are not relieved from personal liability for the amount of tax if they
5 fraudulently fail to collect the tax or if they solicit purchasers to participate in an
6 unlawful claim of exemption.

7 2. Unreported Sales Tax for October 2016. Debtor has reported sales tax for October 2016 of
8 \$88,829.36 but, per the Doug Houghton declaration concurrently filed herein, refused to remit said
9 sums. These taxes came due November 25, 2016.

10 **RCW 82.32.045**
11 **Taxes—When due and payable—Reporting periods—Verified annual**
12 **returns—Relief from filing requirements.**

13 (1) Except as otherwise provided in this chapter, payments of the taxes imposed
14 under chapters 82.04, 82.08, 82.12, 82.14, and 82.16 RCW, along with reports and
15 returns on forms prescribed by the department, are due monthly within twenty-five
16 days after the end of the month in which the taxable activities occur.

17 3. Common Cash Management. Upon information and belief, it is alleged that the holding
18 company administers a common cash management account and controls the reporting of tax and
19 payment through a single account although all corporations are alleged to have a separate identity
20 with separate EIN's and UBI's. *See* Exhibit 2: page 2 [underlined text from Feinstein].

21 4. Payment Is Mandated By Prevailing Case Law. Debtor's counsel has been warned
22 about the identity and ownership of collected trust in this and many prior cases. Attached hereto
23 as *Exhibit 1* is email from Doug Houghton for Department of Revenue making official demand.
24 Under the prevailing body of case law, these funds are not property of the estate under §541 and
25 should be turned over. In re Megafoods Stores, Inc., 210 B.R. 351, 355-57 (Bankr. 9th Cir. 1997);
26 163 F.3d 1063 (9th Cir. 1998). Begier v. Internal Revenue Service, 496 U.S. 53, 110 S.Ct. 2258,
110 L.Ed.2d 46 (1990).

5. Motion to Shorten Time. Because there is substantial risk of depletion of funds that are
not property of the estate, this motion is supported by a motion to shorten time and specially set.
Because of the common cash management scheme, this court can afford complete relief without

1 involving each separate corporation—especially beneficial as they still haven’t been
2 administratively consolidated.

3 6. Pending December 23rd Motion to Appoint Trustee/Dismiss. The court is asked to take
4 judicial notice of the factual assertions set forth in the State’s pending motion to appoint Trustee or
5 dismiss otherwise calendared for December 23, 2016. *Docket 5.*

6 7. Updated Summary Of Taxes Owing Pre-filing. Attached hereto as *Exhibit 3* is a
7 summary of current taxes owed the State. The total sum is \$753,965.62.

8 WHEREUPON, having so stated, the State PRAYS the court mandate the applicable taxes,
9 interest and penalties be turned over, for cause stated herein.

10 DATED this 29th day of November, 2016.

11 ROBERT W. FERGUSON
12 Attorney General

13 /s/ Zachary Mosner

14 ZACHARY MOSNER, WSBA No. 9566
15 Assistant Attorney General
16 Bankruptcy & Collections Unit
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